



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/418,902	10/15/1999	WALTER V. KLEMP	P01896US0	9464

23770 7590 02/24/2005

PAULA D. MORRIS & ASSOCIATES, P.C.
d/b/a THE MORRIS LAW FIRM, P.C.
10260 WESTHEIMER, SUITE 360
HOUSTON, TX 77042-3110

EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/418,902

Applicant(s)KLEMP ET AL. *OK***Examiner**

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 54-60 and 73-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 76-85 is/are allowed.
- 6) ☒ Claim(s) 1-18, 54-58, 60 and 73-75 is/are rejected.
- 7) ☒ Claim(s) 59 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/10/04</u> . | 6) <input type="checkbox"/> Other: _____ |

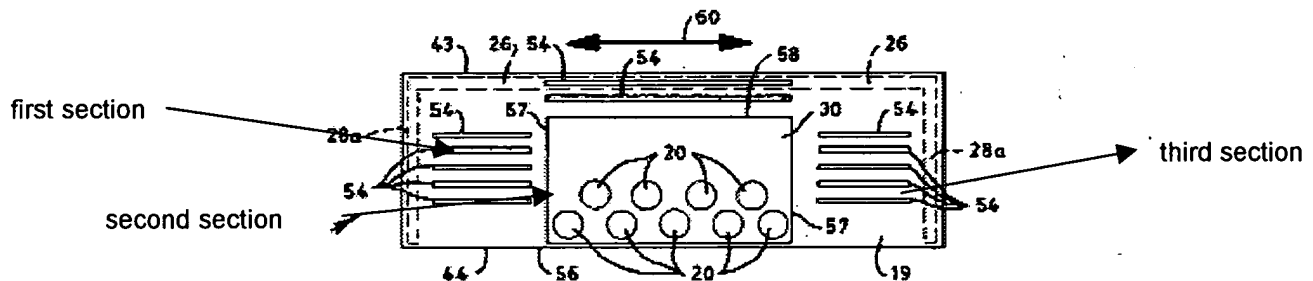
DETAILED ACTION***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 – 4, 6 – 18, 54 – 58, 60 and 73 – 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner et al. (US 6,135,988).

With respect to claim 1, Turner et al (hereinafter referred to as Turner), teaches a disposable absorbent article having side and end edges (10), a topsheet layer (12), a backsheet layer (14), an absorbent core (16), and an end strip (18, 19) as shown below:

**FIG. 5**

Turner discloses the first section having generally elastic properties (col. 9, lines 54 – 67) and laterally extending in generally parallel relation with the end edges (figure 1), and the second section (which is located between the first section and reference

Art Unit: 3761

character "57") can be understood to be substantially less elastic than the first section since the second section does not include any elastic strands. Likewise, the second section extends in generally parallel relation therewith (figure 5). Additionally, Turner teaches the third section (the next elastic section) being spaced away from the topsheet and core as set forth in col. 4, lines 65 – 66. Further, Turner discloses each section of the end strip to have an elasticity different from said other sections (col. 9, lines 54 – 67) and a position different from said other sections (i.e., each section is located on a different position of the tab). The sections also meet the claimed limitations with respect to the locations of the inner and outer margins of each section as shown in the above referenced figure 5.

The difference between Turner and claim 1 is the provision that the absorbent article include a pair of end strips.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Turner to provide a second end strip since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art.

Regarding claim 3, Turner discloses the first and second sections being secured to the topsheet in col. 4, lines 37 – 40.

With reference to claims 4, 8 and 10, Turner shows the end strip to be formed from elastic material in col. 9, lines 42 – 43.

With respect to claim 6, Turner teaches the first section to form a waistband portion in figure 3.

Art Unit: 3761

Regarding claim 7, Turner discloses the first section fixed along one of said end edges in figure 3.

As to claims 8 and 10, the third section is formed from elastic material as set forth in the rejection of claim 1.

With reference to claim 9, Turner shows the article with the third section including side portions, a pair of side walls (64), and each side portion of the third section being secured to one of the end portions of the side wall structure (figure 1) with an intermediate portion of each side wall being biased generally upward as set forth in col. 12, lines 52 – 57.

With respect to claim 11, Turner teaches the article with a containment pocket having a depth dimension (col. 5, lines 19 – 22), and being bound by a substantially continuous wall being defined by the third sections of the end strip (figures 1 and 6).

With reference to claims 12 – 13, 60, 62 and 67, Turner has disclosed a pocket being formed in col. 4, line 65 to col. 5, line 7. This pocket would obviously provide a depth dimension as claimed by the applicant. It would be obvious to one of ordinary skill in the art to adjust the depth measurement in order to arrive at the claimed invention through the use of mere routine experimentation and observation.

As to claim 14, Turner discloses the article wherein an intermediate portion of each of the side edges extending generally parallel with the core is upwardly biased in figure 6.

With reference to claim 15, Turner teaches the wall structure to include a portion of the topsheet at least one elastic member in col. 12, lines 36 – 40 and figure 6).

Art Unit: 3761

Regarding claim 16, Turner shows the first and second sections fixed to the topsheet (col. 4, lines 38 – 40), the third section extending upwardly (col. 4, line 65, figure 6) and the first and third sections being elastic (col. 9, lines 42 – 43) with the second section substantially inelastic (figure 5 and the rejection of claim 1).

As to claim 17, Turner discloses a front waist region (32), a back waist region (34), a crotch region (36), the core being disposed in the crotch region (16), an ear region (figure 3), and an end strip extending laterally into two of said ear regions as set forth in figure 3.

With respect to claim 18, Turner provides an end strip constructed from elastic material (col. 9, lines 54 – 67) being secured to the topsheet (col. 4, lines 38 – 40), which would in turn serve to provide tension in the waist region.

With respect to claims 54 – 58 and 81, Turner teaches an article meeting all of the limitations of the claims as previously addressed in the rejection of claims 1 – 18 and 75 with the fixed waist section being represented by the rear end edge (43) and the elastic inward section being represented by the elastic strands.

Regarding claim 60, the absence of a critical teaching and/or unexpected results leads the examiner to believe that the claimed limitation would be an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art invention.

With reference to claims 73 – 75, see the rejection of claim 1 and figure 5.

Art Unit: 3761

Claims 1 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sageser et al. (US 6,039,906).

With respect to claim 1, Sageser et al (hereinafter referred to as Sageser), teaches a disposable absorbent article having side and end edges, a topsheet layer, a backsheet layer, an absorbent core disposed therebetween (col. 3, lines 10 – 16), and an end strip (col. 4, lines 46 – 50).

Sageser discloses the first section having generally elastic properties and laterally extending in generally parallel relation with the end edges, and the second section can be understood to be substantially less elastic than the first section since the second section does not include the elastic strand. Likewise, the second section extends in generally parallel relation therewith. Additionally, Sageser teaches the third section being spaced away from the topsheet and core wherein each section of the end strip is distinctly elastic and distinctly positioned relative to said other sections as set forth in figure 1.

The difference between Sageser and claim 1 is the provision that the absorbent article include a pair of end strips.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Sageser to provide a second end strip since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art.

Art Unit: 3761

With reference to claims 2 and 5, the plurality of voids in the second section substantially de-elasticizeds the area of the second section as set forth in figure 1 and supported by the applicant's disclosure.

As to claims 3 – 4 and 8, the first and second sections are secured to the topsheet and are formed from elastic material as set forth in col. 4, lines 46 – 50.

As to claims 6 and 7, the first section is fixed along one of the end edges and forms a waistband as set forth in figure 1.

Allowable Subject Matter

Claim 59 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 76 – 85 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the overall claimed combination of a disposable absorbent article comprising a pair of side walls, a pair of end strips including a fixed waist section including an elastic end section, an elastic inward section disposed longitudinally inward of the fixed waist section and in general parallel relation therewith, wherein the fixed waist section further includes an intermediate section disposed between the elastic end section and the inward section wherein the intermediate section has a plurality of voids provided therein has neither been anticipated nor rendered obvious by the prior art of record.

Response to Arguments

Applicant's arguments with respect to claims 1 – 18, 54 – 58, 60 and 73 – 75 have been considered but are moot in view of the new ground(s) of rejection.

Initially, the examiner notes that claim 59 has been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 76 – 85 are allowed.

As set forth in the rejection of claim 1, the examiner considers the second section as the area between the end of the elastic strands in the first section and the beginning of the side edge (reference character "57") of the absorbent material. As set forth in the claims, this section is positioned longitudinally inward of the first section, extends in general parallel relation with the first section and the end edges, is less elastic than the first section (since it does not include any elastic strands) and has first and second laterally extending margins that are positioned longitudinally inward of the inner margin of the first section.

Likewise, by applicant's own admission, Sageaser discloses an elastic panel sandwiched between the topsheet and the backsheet, thereby providing a separate element spaced away from the topsheet and the core. Sageaser does provide a second section that is more elastic than the first as shown in figure 1. The middle panel has 6 apertures versus the nine apertures on either end. Since the applicant has acknowledged that voids formed in the elastic section substantially de-elasticize an area

Art Unit: 3761

adjacent to the void, the examiner contends that an a panel having nine apertures would be less elastic than an panel having six apertures as shown by Sageser.

Therefore, Sageser does provide a second section that is more elastic than a first.

The end strip of Sageser does include three sections which have an elasticity different from the other sections and a position different from the other section and has sections that meet the claimed limitations as set forth in the rejection of claim 1.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., first and second sections that are not secured to the topsheet) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The examiner also notes that both Turner and Sageser disclose the end strip being formed from an elastic material as set forth in col. 9, lines 33 – 41 and in col. 3, lines 13 – 16, respectively.

Regarding the applicant's argument with respect to claim 2, the examiner notes that contrary to applicant's argument the Turner reference has not been used to reject claim 2. Claim 2 is rejected under Sageser who, in fact, does provide a plurality of voids in the second section which would substantially de-elasticizeds the area of the second section as set forth in figure 1 and as supported by the applicant's disclosure.

Art Unit: 3761

Regarding the applicant's statements with respect to claims 3, 4 and 54, the examiner has addressed all of these claim limitations in the previous and current rejection. Applicant should discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them. The mere statement that the references do not teach certain elements is non persuasive because the applicant has not clarified why the rejection already set forth by the examiner does not meet the claimed limitations.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Examiner
Art Unit 3761